2025 INSC 347

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 5781-5782 OF 2022

THE AUROVILLE FOUNDATION ....APPELLANT

VERSUS

NAVROZ KERSASP MODY
& ORS. ....RESPONDENT(S)

J U D G M E N T

BELA M. TRIVEDI, J.

1. The present Appeals stem from the final judgment and order dated 28.04.2022 passed by the National Green Tribunal, Chennai (hereinafter referred to as the "Tribunal") in O.A. No. 239/2021, and from an interim order dated 27.07.2022 passed by the said Tribunal in the M.A. No.6/2022 in O.A No.239/2021. The directions given by the Tribunal in the impugned judgment dated 28.04.2022 read as under:-

I. **“125.** In the result, this Original Application is allowed in part and disposed of with the following directions: -

(i) The 1st Respondent is directed to prepare a proper township plan either in respect of 778 Ha which is in their possession now or in respect of 1963 Ha which was visualized by the MOTHER by identifying the locations where each zone will have to be located, where the roads will have to be laid showing the location of the ring roads with their width and further road, if any, to be constructed, the nature of industries and other activities which they are expected to establish in the township and if it is not going to be implemented as one phase, how many phases in which they are going to complete the project and then apply for Environmental Clearance (EC) as it will fall under Item 8 (b) of the EIA Notification, 2006 as amended from time to time. Till then they are directed not to proceed with further construction in the project area.”

(ii) Considering it as an exceptional circumstances, even before obtaining Environmental Clearance (EC) for further activity, we are permitting the 1st Respondent to complete the crown road on the following conditions: -

a. The Joint Committee appointed by this Tribunal viz., (i) the District Collector who is the Chairman of the District Green Committee of the concerned district along with (ii) the Forest Officer not below the rank of Conservator of Forest, as deputed by the Principal Chief Conservator of Forests, (Head of Forests Force) and Chief Wildlife Warden, State of Tamil Nadu to inspect the area in question and ascertain whether by

reducing the width of the road at suitable places or by slight realignment (if any) required, so that the number of trees to be cut can be minimized so that the vision of the MOTHER of creating a green cover in that area can be protected.

b. The Joint Committee is also directed to ascertain as to whether there are any water bodies/streams exists in that area and if the road passes through the water body, then what is the manner in which the road will have to be constructed by elevation without affecting the water body/water flow or a bed level causeway with box type of vents will suffice. If such a recommendation is made, that also will have to be implemented, and the 1st Respondent is to undertake the construction as suggested by the committee.

c. The Joint Committee is directed to complete the process and submit the report to the 1st Respondent within a period of two months and on receipt of the same, the 1st Respondent is directed to carry out the crown road work, in the impugned area with tree cover, strictly in accordance with the recommendations made by the Joint Committee.

d. Till that exercise is completed, the 1st Respondent is directed not to cut any further trees from the property. The 1st Respondent is at liberty to undertake the crown road work in the remaining stretches where there are no trees. The 1st Respondent is also at liberty to take action against unauthorized occupations, if any, strictly in accordance with the law in force.

(iii) The 1st Respondent is also directed to plant trees in the ratio of 1: 10 for the number

of trees to be cut, and the species to be recommended by the Joint Committee may be considered for planting either on the side of the road or other area identified by the Joint Committee, in order to protect environment and also to maintain the green cover in that area.

(iv) Considering the circumstances, parties are directed to bear their respective costs in the application.

(v) The Registry is directed to communicate this order to the members of the Joint Committee appointed by this Tribunal, the Principal Chief Conservator of Forests (Head of Forests Force) and Chief Wildlife Warden, State of Tamil Nadu, the Ministry of Environment, Forests & Climate Change (MoEF&CC) and the Additional Chief Secretary to Government, Department of Environment, Forests & Climate Change for their information and compliance of directions."

II. The following further directions were given by the Tribunal by passing the interim order dated 27.07.2022 in MA No. 6/2022:

> **"7.** In the meantime, the Joint Committee appointed by this Tribunal vide Judgment dated 28.04.2022 is also directed to file the report regarding the nature of work done and observations made by them at the time of inspection."

2. This Court on 13.12.2023 passed the following interim order pending these Appeals.

> **"5.** Having regard to the said prayer which was sought by the Respondent No.1 (original applicant) and having regard to the final directions given by the Tribunal in the impugned order, we are of the prima facie opinion that the direction contained in Para 125(i) being outside the jurisdiction of the Tribunal, the same is required to be stayed till further orders, and is ordered accordingly."

3. Prelude on the History of Auroville:-

I. Before appreciating the issues involved, it would be apt to peep into the history of Auroville. In 1965, the "Mother" (Mirra Alfassa, a French lady), a spiritual collaborator of Sri Aurobindo (a Spiritual reformer, Philosopher and Educationist), envisioned to launch the project of Auroville, with an aim to establish an international universal township, where men and women of all countries are able to live in peace and harmony, above all creeds, all politics and all nationalities and to realise human unity. The project of Auroville was formerly inaugurated by the "Mother" in 28.02.1968. The Charter of Auroville given by the "Mother" was the following:

> **"1.** Auroville belongs to nobody in particular. Auroville belongs to humanity as a whole. But to live in Auroville one must be a willing servitor of the Divine Consciousness.

2. Auroville will be the place of an unending education, of constant progress and a youth that never ages.

3. Auroville wants to be the bridge between the past and the future. Taking advantage of all discoveries from without and from within, Auroville will boldly spring towards future realisations.

4. Auroville will be a site of material and spiritual researches for a living embodiment of an actual Human Unity."

II. The original Master Plan of the Auroville was conceptualized in Galaxy shape, and was planned to eventually accommodate 50,000 residents, a number which the "Mother" considered sufficient to allow the experiment in human unity to take on a meaningful and significant dimension. Picture of Galaxy Model Plan conceptualized in 1968 is shown below:

III. The project Auroville was legally started as the project of a charitable organization, “The Sri Aurobindo Society” in Pondicherry, which was created to diffuse Sri Aurobindo’s thoughts. The development of Auroville in the initial few years showed good progress and it developed at a rapid pace. Number of Indians and foreigners settled down in Auroville and devoted themselves to various activities showing a remarkable harmony amongst the members of Auroville, which gave a promise to the Government of India of an early fulfilment of the ideals for which Auroville was established. It was also encouraged by UNESCO and other International Organizations of the world. However, after the “Mother” passed away in 1973, the situation changed, and number of complaints came to be received by the Government of India with regard to the mismanagement in the working of the Sri Aurobindo Society. Following the requests by majority of Auroville residents, the Government of India issued a Presidential Ordinance called the Auroville (Emergency Provisions) Ordinance, 1980, later replaced by the Auroville (Emergency Provisions) Act, 1980.

Finally, the Government of India created a unique status for Auroville by passing the Auroville Foundation Act, 1988 (hereinafter referred to as the “A.F.Act”).

4. <u>Constitution of Auroville Foundation and its Standing Orders</u>-

I. The Government of India notified the Constitution of Auroville Foundation as a statutory body on 29.01.1991 under the A.F. Act, and at present it is under the realm of Ministry of Human Resource Development (Department of Higher Education) as the Central Government undertaking.

II. As transpiring from the record, the original Galaxy Plan envisioned by the “Mother” in 1968 was the plan with four zones in Auroville, with the centripetal force, being the “Matrimandir”. The said Galaxy Plan was revised in 1972 as the First Master Plan called the “Town Plan”. As the A.F. Act required statutory Master Plan as contemplated in Section 17(e) read with Section 19(2)(c) of the said A.F. Act, the Master Plan was approved by the Governing Board and the Residents’ Assembly of the Appellant Foundation in 1999. The said 1999 Master Plan was further

approved by the competent authority- the Town and Country Planning Organisation (TCPO), Ministry of Urban Development, on 15.02.2001 under the Model Town and Country Planning Act. The said Master Plan was notified on 16.08.2010 and published in the Official Gazette on 28.08.2010.

III. In view of Section 11(3) of the A.F. Act, the Governing Board decided, that “Standing Orders” not inconsistent with the provisions of the A.F. Act and the Rules made thereunder, on the matters that the Governing Board may consider appropriate and necessary, shall be notified from time to time, by the Auroville Foundation. The said Resolution was notified in the Gazette of India, Part III dated 05.03.2011 by the Ministry of Human Resource Development (Department of Higher Education).

IV. Since the said approved Master Plan prescribed the “Town Development Council” as the body for implementing the Master Plan with the organizational structure as in Appendix V of the Master Plan, the Governing Board in terms of the provisions of the Master Plan, constituted the

Town Development Council for the purpose of implementation of the Master Plan, vide the Standing Order No. 6/2011 dated 01.05.2011, which was notified in the Government of India Gazette, Part III, dated 11.06.2011. The said Standing Order dated 01.05.2011 came to be replaced by the Standing Order No. 1/2019 dated 04.06.2019.

V. Again, the said Standing Order dated 04.06.2019 came to be replaced by the Standing Order No.1/2022 dated 01.06.2022, which was notified in the Gazette of India, Part III, on 15.07.2022. On 01.06.2022, the Auroville Foundation issued the Office Order for the re-constitution of the Auroville Town Development Council (ATDC). The Appellant-Foundation thereafter also issued a Corrigendum dated 07.12.2022, to the Standing Order No. 1/2022 dated 01.06.2022, in order to clarify and add the source of statutory power in the Preamble to the said original Standing Order dated 01.06.2022. The said Corrigendum was also published in the Gazette of India, Part III, on 10.12.2022.

5. Prefatory Facts:-

I. The Respondent Nos. 1 and 2 (the original Applicants) had filed an Application being O.A. No.239/2021 before the Tribunal, raising a grievance with regard to cutting of large number of trees by the Appellant-Auroville Foundation, alleging *inter alia* that the Master Plan for Auroville as envisaged by the 'Mother' was approved by the Governing Board of the Auroville Foundation in consultation with the Residents' Assembly, and it further led to preparation of the Auroville Universal Township Master Plan-Perspective 2025, which was approved by the Ministry of Human Resources Development in 2001. However, now the Appellant-Foundation was focusing on the manifestation of the roads mentioned in the Master Plan, e.g. the Crown Road, a road encircling the centre of the Township, and the outer ring road, and was intending to distract Darkali Forest by using huge machineries causing deterioration to the environment. According to the Respondents-original Applicants, the said lands covered under the deemed Forest, were entitled to the

protection as mandated in ***T.N. Godavarman Thirumulpad Vs. Union of India and Others***[1] case.

II. The Respondents Applicant therefore had sought the following reliefs in the said O.A. No.239/2021.

> "**INTERIM RELIEF:**
> A. Injunct the 1st respondent from felling any tree or clearing undergrowth in the Darkali forest or any area in Auroville for the proposed crown road project.
> B. Issue such other orders as it deems fit in the interest of the case and render justice.
>
> **MAIN PRAYER:**
> A. Direct the 1st respondent to prepare a Detailed Development Plan including a mobility plan which is based on and respects the present-day ground realities, to be approved as mandated in the Master Plan and implement projects based on such plan after necessary impact assessments and feasibility studies in an environmentally sustainable manner.
> B. Direct the respondent to pay costs to the applicant.
> C. Issue such other orders as it deems fit in the interest of the case and render justice."

III. The Tribunal initially vide the order dated 10.12.2021 granted an interim order directing the Appellant-Foundation not to cut any further trees till the next date of hearing. The said interim order thereafter was extended till the final disposal of the case.

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[1]**(1997) 2 SCC 267**

IV. The Appellant-Foundation (1st Respondent before the Tribunal) had filed a counter affidavit raising various contentions including the maintainability of the Application itself as also the jurisdiction of the Tribunal to entertain the Application. It was specifically contended that neither the word 'Forest' did appear in the Auroville Charter nor in the Act of 1988. Auroville or any part of it, was neither a Forest nor a deemed Forest requiring protection or clearance under the Forest (Conservation) Act, 1980.

V. The Respondent No.3-Union of India through the Ministry of Environment, Forest and Climate Change (MoEF&CC- the Respondent No.2 before the Tribunal) had also filed a counter-affidavit stating in detail the stand and role of the Ministry and contending *inter alia* that the requirement of prior Environmental Clearance for certain categories of construction and developmental activities (new construction projects and new industrial estates) in the country was inserted in Schedule-I, after Item 30, through an amendment in EIA Notification, 1994 (operative at that time) vide the Notification dated 07.07.2004. The

Central Government under the Environment (Protection) Act, 1986 had issued Environment Impact Assessment Notification dated 14.09.2006 superseding Environment Impact Assessment Notification 1994, which required prior Environmental Clearance from the concerned Regulatory Authority. It was further contended that the Auroville Project was examined by the said regulatory authority for the applicability of environmental clearance as directed by the Tribunal and it was found that the Auroville Township Project was under construction much before the EIA Notification, 1994 and its amendment in 2004, and substantial building work of Auroville Project was completed at various stages as far back as in 2001. Therefore, it could not have been considered as a new project under the provisions of the Notification dated 07.07.2004. It was specifically contented that there was no change in the scope of Township project from the original Master Plan, and as such the Township project would not affect the provisions of the EIA Notification, 2006 and its

amendments for grant of Environmental Clearance.

VI. The Tribunal raised the following points for consideration.

> "**65**. The points that arise for consideration are:
> **(i)** Whether the application is maintainable?
> **(ii)** Whether it was barred by limitation?
> **(iii)** Whether the intended activity of the 1st respondent requires any prior Environmental Clearance or clearance under the Forest (Conservation) Act, 1980 as claimed by the applicant. Even if they are not required, is there any necessity to issue any directions applying the "*Precautionary Principle*" to protect environment and if so, what are the nature of directions to be issued?"

VII. The Tribunal assuming the jurisdiction observed that a substantial question of alleged violation of environmental laws in the implementation of the project having been involved, the Application was maintainable. Disagreeing with the stand taken by the MoEF&CC that the Project would fall within the exempted category of 2004 Notification and did not require the Environmental Clearance, the Tribunal held that any further activity to be done by the Appellant-Foundation can be permitted to be carried out only after obtaining the necessary prior Environmental Clearance. As regards the

disputed Crown Road, the Tribunal held *inter alia* that the major portion of Crown Road has already been completed and only a small portion has remained, and that if it was not allowed to be completed, there would be hardship caused to the Appellant-Foundation. The Tribunal, on the question as to whether the area in question was a Forest as envisaged in ***T.N. Godavarman's*** case, held that it could not be treated as a Forest, as in none of the Government documents produced, it was treated as Forest, and admittedly it was man-made plantation of some species. The Tribunal therefore held that it would not come under the definition of "Forest" for the purposes of obtaining clearance under the Forest (Conservation) Act, 1980.

VIII. The Tribunal after recording such findings applied the "Precautionary Principle" and issued the directions as stated earlier, vide the impugned judgment and order dated 28.04.2022 in O.A. No. 239/2021, and the impugned order dated 27.07.2022 in M.A. No. 6/2022, which are assailed by the Appellant-Foundation in these Appeals.

IX. It may be noted that one of the intervenors before the Tribunal, Ms. Natasha Storey had also filed a Writ Petition being No.25882/2022 challenging the Notification dated 01.06.2022 containing the Standing Order No. 1/2022 issued by the Appellant-Foundation, and the Civil Appeal No. 13651/2024 arising out of the order passed in the said Writ Petition was also heard simultaneously with the present set of Appeals. The said Appeal is also being decided simultaneously by a separate judgment.

6. Statutory Provisions of the NGT Act

I. As the long title of the Act states, the National Green Tribunal Act, 2010 (for short "NGT Act") was enacted to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forest and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for the matters connected therewith and incidental

thereto. Section 2(1)(m) defines “substantial question relating to environment” as under:

> **“2(1)(m)** "substantial question relating to environment" shall include an instance where,—
>
> (i) there is a direct violation of a specific statutory environmental obligation by a person by which,—
> (A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or
> (B) the gravity of damage to the environment or property is substantial; or
> (C) the damage to public health is broadly measurable;
>
> (ii) the environmental consequences relate to a specific activity or a point source of pollution;”

II. Chapter III of the said Act pertains to the jurisdiction, powers and proceedings of the Tribunal. Section 14 and Section 15 thereof being relevant in respect of the jurisdiction of the Tribunal, the same are reproduced hereunder:

> **“14. Tribunal to settle disputes.—**
>
> (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.
> (2) The Tribunal shall hear the disputes arising from the questions referred to in

sub-section (1) and settle such disputes and pass order thereon.

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:
Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

15. Relief, compensation and restitution.—

(1) The Tribunal may, by an order, provide,—
(a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);
(b) for restitution of property damaged;
(c) for restitution of the environment for such area or areas, as the Tribunal may think fit.

(2) The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:
Provided that the Tribunal may, if it is satisfied that the applicant was prevented

> by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.
>
> (4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.
>
> (5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may be, compensation or relief received from, any other court or authority."

III. Section 19 of the NGT Act pertains to the Procedure and Powers of the Tribunal, which *inter alia* states that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principle of natural justice. It also states that the Tribunal shall not be bound by the rules of evidence contained in the Indian Evidence Act, 1872. Section 20 provides that the Tribunal shall, while passing any order or decision or award, apply the Principles of Sustainable Development, the Precautionary Principle and the Polluter Pays Principle.

IV. The enactments in respect of which the Tribunal has the jurisdiction to grant relief under Section 14 and 15 are specified in Schedule-I appended to the NGT Act, which reads as under:

> **"SCHEDULE I**
> [See sections 14(1), 15(1), 17(1)(a), 17(2), 19(4)(j) and 34(1)]
>
> 1. The Water (Prevention and Control of Pollution) Act, 1974;
> 2. The Water (Prevention and Control of Pollution) Cess Act, 1977;
> 3. The Forest (Conservation) Act, 1980;
> 4. The Air (Prevention and Control of Pollution) Act, 1981;
> 5. The Environment (Protection) Act, 1986;
> 6. The Public Liability Insurance Act, 1991;
> 7. The Biological Diversity Act, 2002."

ANALYSIS:

7. As transpiring from the Section 14, the Tribunal has the jurisdiction over all civil cases where the substantial question relating to environment including enforcement of any legal right relating to environment, is involved and such question arises out of the implementation of the enactments specified in Schedule I. Therefore, for the exercise of jurisdiction by the Tribunal under Section 14, it has to be shown that (1) a substantial question relating to environment including enforcement of any legal right relating to environment is involved;

and (2) such questions arise out of the implementation of the enactments specified in Schedule I. The term "substantial question relating to environment" as defined in Section 2(1)(m) of the Act would include, *inter alia,* the question where there is a direct violation of a specific statutory environmental obligation by a person by which (a) the community at large other than the individual or group of individuals is affected or likely to be affected by the environmental consequences; or (b) the gravity of damage to the environment or property is substantial; or (c) the damage to public health is broadly measurable. The substantial question would also include the environmental consequences relating to a specific activity or a point source of pollution. In view of the said definition also the Tribunal before exercising the jurisdiction has to satisfy itself that a substantial question pertaining to the violation of or implementation of any specific statutory environmental obligations contained in any of the enactments specified in Schedule I, is involved.

8. Recently in case of ***State of Madhya Pradesh Vs. Centre for Environment Protection Research and Development[2],*** this Court held as follows:

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[2] **(2020) 9 SCC 781**

> **"42.** In view of the definition of "substantial question relating to environment" in Section 2(1)(*m*) of the NGT Act, the learned Tribunal can examine and decide the question of violation of any specific statutory environmental obligation, which affects or is likely to affect a group of individuals, or the community at large.
>
> **43.** For exercise of power under Section 14 of the NGT Act, a substantial question of law should be involved including any legal right to environment and such question should arise out of implementation of the specified enactments.
>
> **44.** Violation of any specific statutory environmental obligation gives rise to a substantial question of law and not just statutory obligations under the enactments specified in Schedule I. However, the question must arise out of implementation of one or more of the enactments specified in Schedule I."

Similar view is also taken in case of ***H.P. Bus-Stand Management and Development Authority Vs. Central Empowered Committee[3].***

9. From the above, it is explicitly clear that every question or dispute raised by an Applicant before the Tribunal pertaining to the environment cannot be treated as a substantial question. It has to be a substantial question relating to environment as contemplated in Section 2(1)(m), and such substantial question must arise out of the implementation of any of the

[3] (2021) 4 SCC 309

enactment/enactments specified in Schedule I. Though strict law of evidence may not be applicable to the cases filed before the Tribunal, the Applicant has to raise the substantial question in his Application specifically alleging the violation of a particular enactment specified in Schedule I.

10. So far as the facts of the present Appeal are concerned, as stated hereinabove, the only grievance raised by the Respondents (original Applicants) in their O.A. was with regard to the Appellant-Foundation constructing the roads as mentioned in the Master Plan which was already approved by the Governing Board of the Foundation and by the Minister of Human Resource Development way back in 2001, and published in the official gazette in 2010. The allegation made in the Original Application was that while constructing the said roads particularly the Crown road, or road encircling the centre of township, and an Outer Ring Road, the forest area known as Darkali forest was being destructed. According to the Respondents, the said area was required to be treated as a deemed forest and was required to be protected as mandated in the ***T.N. Godavarman's*** **Case**. Except the said bare allegations, there was no other allegation

made with regard to any violation of any of the enactments specified in Schedule I.

11. Significantly, the Tribunal specifically negated the said allegations raised by the Respondents by observing *inter alia* in para 118 of the impugned judgment that the said area cannot be treated as a Forest, as in any of the Government documents produced, it was not treated as a Forest and not even shown as a Forest, and that admittedly, it was a man-made plantation of some species, and therefore, it will not come under the definition of Forest for the purpose of obtaining clearance under the Forest (Conservation) Act, 1980. Curiously, after having held that the area in question could not be treated as a Forest and that there was no clearance required under the Forest (Conservation) Act, the Tribunal proceeded further applying the "Precautionary Principle" and appointed a Joint committee to inspect the area in question and ascertain whether any modification could be made in the width of the road, and further directed the Appellant-Foundation to prepare a proper Township plan in respect of the area in their possession and in respect of the area visualized by the "Mother".

12. In our opinion, the Tribunal has completely misdirected itself by entering into the restricted domain of judicial review under the guise of applying “Precautionary Principle” in extraordinary circumstances, and in interfering with the implementation of Master Plan which was already approved by the competent Authority way back in the year 2001. As stated earlier, the original Galaxy Plan envisaged by the “Mother” in 1968 was the structure with 4 zones in Auroville with the centripetal force, being “Matrimandir”. The said Galaxy Plan was revised in 1972 as the First Master Plan called the “Town Plan”. Since the Auroville Foundation Act required Statutory Master Plan as contemplated in Section 17(e) read with Section 19(2)(c), the said Master Plan was approved by the Governing Board of the Appellant Foundation in 1999, and was further approved by the competent authority-Town and Country Planning Organisation, Ministry of Urban Development on 15.02.2001. The said Master Plan was also notified on 16.08.2010 and published in the Official Gazette on 28.08.2010.

13. Thus, the said Master Plan having been approved by the competent Authority as back as in 2001 had attained a statutory force and a finality. There are

about more than 2000 substantial constructions/ developments, which have taken place in Auroville since then till this date. The construction of roads as mentioned in the said approved Master Plan including the Crown Road, a Road encircling the Centre of the Township and an outer Ring Road, being on the verge of completion, except few patches, which could not be completed because of the obstructions caused by the disgruntled Residents like the Respondents, the Tribunal thoroughly misdirected itself by directing the Appellant to prepare a proper Township Plan. It is also significant to note that the Auroville Foundation Act is a Special Act enacted to provide for the Acquisition and Transfer of the Undertakings of Auroville and to vest such undertakings in a Foundation established for the purpose with a view to making long term arrangements for the better management and further development of Auroville in accordance with its Original Charter and for the purpose connected therewith and incidental thereto. As per Section 27 of the said Act, the provisions of the said Act have the effect notwithstanding anything inconsistent therewith contained in any other law for time being in force or in any instrument having effect by virtue of any law other

than the Act, or in any decree or order of any Court, Tribunal or other Authority. Thus, in view of the overriding effect of A.F. Act also the impugned direction issued by the Tribunal without any jurisdiction as circumscribed under Section 14 of the NGT Act, would not be tenable at law.

14. The Tribunal has also travelled beyond its jurisdiction in giving the impugned directions under the guise of exceptional circumstances applying the “Precautionary Principle.” At this juncture, it is very pertinent to note that as stated earlier, the Ministry of Environment, Forest and Climate Change in its affidavit filed before the Tribunal had made its stand very clear that the Auroville Township Project was under construction much before the EIA Notification, 1994 and its amendment in 2004 and therefore could not be considered as a new Project under the said Notification of 2004. It was also made clear that there was no change in the scope of Township Project from the Original Master Plan and as such, the Township Project would not affect the provisions of EIA Notification, 2006 and its amendments for the grant of Environment Clearance. Again curiously, the Tribunal without any material on record, brushed aside the said

stand taken by MoEF&CC in its affidavit, by holding that any further activity to be done by the Appellant-Foundation, could be permitted to be carried out only after obtaining necessary prior Environmental Clearance, and then proceeded to appoint the Joint Committee to inspect the area in question and to ascertain whether the width of the Road at suitable places could be reduced so that the number of trees to be cut can be minimized. Such directions clearly fall outside the purview of the jurisdiction of the Tribunal particularly when there was no substantial question relating to the environment was shown to have arisen in implementation of any of the enactments specified in Schedule I appended to the NGT Act. There is no whisper in the impugned order as to which of the provision and which of the enactment specified in Schedule I was violated.

15. It would not be out of place to regurgitate the law developed so far on the protection of environment. In the landmark Judgment in case of ***Vellore Citizens Welfare Forum Vs. Union of India & Others***[4], it was stated that the traditional concept that Development and Ecology are opposed to each other is no longer

[4] **(1996) 5 SCC 647**

acceptable. "Sustainable Development" has been accepted as a viable concept to eradicate poverty and improve the quality of human life, while living within the carrying capacity of supporting ecosystems. "Sustainable Development" as defined by Brundtland Report means "development that meets the needs of the present without compromising the ability of the future generations to meet their own needs." The "Sustainable Development" therefore has been held to be a balancing concept between Ecology and Development as a part of the customary international law.

16. In ***Essar Oil Ltd. Vs. Halar Utkarsh Samiti & Ors.***[5]**,** this Court after referring to the principles enunciated in the Stockholm Declaration, made very apt observations in Para 26 and 27, which maybe quoted hereunder: -

> **"26.** Certain principles were enunciated in the Stockholm Declaration giving broad parameters and guidelines for the purposes of sustaining humanity and its environment. Of these parameters, a few principles are extracted which are of relevance to the present debate. Principle 2 provides that the natural resources of the earth including air, water, land, flora and fauna especially representative samples of natural ecosystems must be safeguarded for the benefit

[5] **(2004) 2 SCC 392**

of present and future generations through careful planning and management as appropriate. In the same vein, the fourth principle says:

> "man has special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat which are now gravely imperilled by a combination of adverse factors. Nature conservation including wildlife must, therefore, receive importance in planning for economic developments."

These two principles highlight the need to factor in considerations of the environment while providing for economic development. The need for economic development has been dealt with in Principle 8 where it is said that "economic and social development is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for improvement of the quality of life". The importance of maintaining a balance between economic development on the one hand and environment protection on the other is again emphasized in Principle 11 which says:

> "The environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries nor should they hamper the attainment of better living conditions for all;"

27. This, therefore, is the aim, namely, to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat. Indeed, the very existence of humanity and the rapid increase in the population together with consequential demands to sustain the population has resulted in the concreting of open lands, cutting down of forests, the filling up of lakes and pollution of water resources and the very air which we breathe. However, there need

not necessarily be a deadlock between development on the one hand and the environment on the other. The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other. This view was also taken by this Court in Indian Council for Enviro-Legal Action v. Union of India [(1996) 5 SCC 281] , where it was said: (SCC p. 296, para 31)

> "While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment."

17. Though it is true that the "Precautionary Principle" and the "Polluter Pays Principle" are part of the environmental law of the country, it is equally true that while the right to clean environment is a guaranteed fundamental right under Articles 14 and 21 of the Constitution of India, the right to development through industrialisation equally claims priority under fundamental rights particularly under Articles 14,19 and 21 of the Constitution of India. There is therefore a need for "Sustainable Development" harmonising and striking a golden balance between the right to

development and the right to clean environment. In ***N.D. Jayal & Anr. Vs. Union of India & Ors.***[6]**,** it is observed as under: -

> "**25.** Therefore, the adherence to sustainable development principle is a *sine qua non* for the maintenance of the symbiotic balance between the rights to environment and development. Right to environment is a fundamental right. On the other hand, right to development is also one. Here the right to "sustainable development" cannot be singled out. Therefore, the concept of "sustainable development" is to be treated as an integral part of "life" under Article 21. Weighty concepts like intergenerational equity (*State of H.P.* v. *Ganesh Wood Products* [(1995) 6 SCC 363]), public trust doctrine (*M.C. Mehta* v. *Kamal Nath* [(1997) 1 SCC 388]) and precautionary principle (*Vellore Citizens* [(1996) 5 SCC 647]), which we declared as inseparable ingredients of our environmental jurisprudence, could only be nurtured by ensuring sustainable development."

18. As demonstrated earlier, in the instant case, no substantial question relating to environment had arisen, nor violation of any of the enactments specified in Schedule-I was alleged. The Tribunal therefore had committed gross error in assuming the jurisdiction and giving directions untenable in law.

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[6] **(2004) 9 SCC 362**

19. In that view of the matter, the impugned Orders passed by the Tribunal being without jurisdiction and legally untenable deserve to be quashed and set aside, and are hereby set aside. The Appeals stand allowed accordingly.

.....J.
[BELA M. TRIVEDI]

……..…….…… J.
[PRASANNA B. VARALE]

NEW DELHI;
17th MARCH, 2025